



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1996

Mr. Kevin McCalla
Director, Legal Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-1574

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100380.

The Texas Natural Resource Conservation Commission (the "commission") has received a request for information from a former commission employee. The requestor seeks, among other things, "all documentation pertaining to the Notice of Intent to Terminate me dated May 23, 1996." You have released some of the requested information and contend that you may withhold the remaining records under section 552.103 of the Government Code.

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

You have submitted to this office a complaint filed with the Texas Commission on Human Rights (the "TCHR") in which the requestor complains that she was discriminated against by the commission. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to the TCHR over complaints alleging employment discrimination under section 706(c) of title VII, 42 U.S.C. § 2000e-5. This office has previously held that a pending complaint before the Equal Employment Opportunity Commission indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983),

336 (1982), 281 (1981). We believe that for the same reasons the same is true of a complaint pending before the TCHR. Our review of the documents at issue shows that they are related to the subject of the anticipated litigation. Thus, in this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). You may therefore withhold the requested records.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Finally, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID#100380

Enclosures: Submitted documents

cc: Ms. Dorothy Cimbanin
(w/o enclosures)